



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
(Attorney Docket No. AHP-98249)

In re Patent Application of:

FRANS GARRIT DAVELAAR

Filed: November 13, 2001

For: METHODS AND VACCINES FOR PROVIDING  
IN OVO PROTECTION AGAINST TURKEY  
RHINOTRACHEITIS

) Appln. No.: 10/054,288  
) Confirmation No.: 5326  
) Customer No.: 25291  
) Group Art Unit: 1648  
) Examiner: Shanon A. Foley

) Paper No.: 16  
)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO A FINAL REJECTION

Dear Sir:

Responsive to the Office Action mailed May 16, 2005 in the above-referenced application, please consider Applicant's comments in a favorable light.

REMARKS

Reconsideration of this application is respectfully requested.

The Examiner sustained the rejection of Claims 1, 3-15 and 17-21 under 35 U.S.C. § 102 (b); the rejection of Claim 16 under 35 U.S.C. §§ 102 (b)/103(a); and the rejection of Claims 2 and 22 under 35 U.S.C. § 103(a) for reasons of record.

Based on the Examiner's rationale for not allowing this case in view of Applicant's amendment and arguments of record, it is clear that the issue of patentability rests on whether the transitional phrase "consisting essentially of" can define the scope of the claimed invention to exclude the interferon of Poston *et al.* Applicant submits that the facts establish that "consisting essentially of" is not equivalent to "comprising" under the circumstances of this case and, thus, the "consisting essentially of" claims sufficiently distinguish the claimed invention from the art.

The guidelines under M.P.E.P. § 2111.03 suggest that the Office may apply prior art under 35 U.S.C. §§ 102 and 103, and construe "consisting essentially of" the same as "comprising" in the absence of a clear indication in the specification or claims of what the basic and novel characteristics of the invention actually are. The recommendation is grounded on certain case law

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